

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

)
WAYNE BERRY,) CIVIL NO. CV 03 00385 SOM LEK
) (Copyright)
Plaintiff,)
) THE POST CONFIRMATION TRUST
vs.) FOR THE FLEMING COMPANIES,
) INC.'S MOTION IN LIMINE NO. 7
HAWAII EXPRESS SERVICE, INC., et al.,) REGARDING EVIDENCE
) PERTAINING TO GUIDANCE
) SOFTWARE, INC. AND C&S
Defendants.) LOGISTICS OF HAWAII, LLC, C&S
) WHOLESALE GROCERS, INC., C&S
) ACQUISITIONS LLC, AND ES3, LLC
)
) DATE: January 20, 2006
) TIME: 2:00 p.m.
) JUDGE: Honorable Susan O. Mollway
) Trial Date: January 24, 2006
)
)
)

THE POST CONFIRMATION TRUST FOR THE FLEMING COMPANIES,
INC.'S MOTION IN LIMINE NO. 7 REGARDING
EVIDENCE PERTAINING TO GUIDANCE SOFTWARE, INC. AND C&S
LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S
ACQUISITIONS LLC, AND ES3, LLC

COMES NOW Defendant the Post-Confirmation Trust for the Fleming Companies, Inc. ("PCT") by and through its attorneys, Kobayashi, Sugita & Goda, and hereby moves this Honorable Court in limine for an Order barring Plaintiff Wayne Berry from introducing or in any way referring to any and all evidence

relating to claims this Court has dismissed or otherwise determined to be irrelevant, including, but not limited to: (a) references to the activities of Guidance Software, Inc. ("Guidance"), the Guidance report and any claims about what files were or were not on the computers purchased from Fleming by the C&S Defendants ("C&S")¹; (b) references to the alleged 4.6 gigabyte cluster; (c) references to the F-1 Project; (d) references to C&S (e.g., the sale of Fleming assets to C&S, the price paid by C&S, the divisions closed by C&S, the divisions that C&S has kept open, and the representation of C&S by Lex R. Smith); and the spoliation of evidence.

This motion is based upon Rule 7 of the Federal Rules of Civil Procedure and Rules 401, 402, 403, and 404 of the Federal Rules of Evidence, and is supported by the Memorandum in Support of Motion, Declaration of Lex R. Smith, and Exhibits attached hereto and the records and files herein.

Dated: Honolulu, Hawaii, January 3, 2006.

KOBAYASHI, SUGITA & GODA



BERT T. KOBAYASHI, JR.
LEX R. SMITH
THOMAS H. YEE
Attorneys for Defendant
THE POST CONFIRMATION
TRUST FOR THE FLEMING
COMPANIES, INC.

¹ Collectively, C&S Logistics of Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S Acquisitions LLC, and ES3, LLC.

and

KIRKLAND & ELLIS LLP
Eric C. Liebler (CA Bar No. 149504)
Damian D. Capozzola (CA Bar No.
228611)
R. Olivia Samad (CA Bar No.
228611)
777 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Co-Counsel for the Post Confirmation
Trust for Fleming Companies, Inc.